

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIARANDY BLACK,
Petitioner,

v.

KVSP,
Respondent.

Case No. 21-03386 BLF (PR)

ORDER OF DISMISSAL

Petitioner, a California state prisoner, filed a *pro se* petition for a writ of habeas corpus under 28 U.S.C. § 2254, challenging his state conviction out of San Francisco Superior Court. Dkt. No. 1 at 1. On August 13, 2021, the Court screened the petition and found it was a mixed petition, containing both exhausted and unexhausted claims. Dkt. No. 9 at 3, citing *Rose v. Lundy*, 455 U.S. 509, 510 (1982). The Court directed Petitioner to file notice that he wishes to strike the unexhausted claim and proceed on the three cognizable and exhausted claims identified in the order, or in the alternative, file a motion for a stay that satisfies the factors under *Rhines v. Webber*, 544 U.S. 269 (2005). *Id.* at 3-4.

On August 30, 2021, mail sent to Petitioner was returned with a notation on the envelope, "Inmate Refused." Dkt. No. 10 at 1. On October 7, 2021, in the interest of justice, the Court directed the Clerk to mail another copy of the screening order to

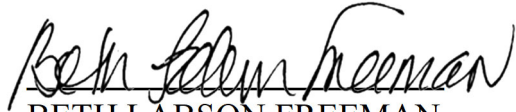
1 Petitioner and granted him one final opportunity to respond. Dkt. No. 11. Petitioner was
2 advised that failure to file a timely response in accordance with the order will result in the
3 dismissal of the petition as a mixed petition under *Rose v. Lundy*, 455 U.S. at 510, and
4 without further notice to Petitioner. *Id.* at 2.

5 Over two months have passed since the Court's last order, and Petitioner has had no
6 further communication with the Court. Accordingly, petition is DISMISSED as a mixed
7 petition. *See Rose v. Lundy*, 455 U.S. at 510.

8 The Clerk shall terminate any pending motions and close the case.

9 **IT IS SO ORDERED.**

10 Dated: December 16, 2021


BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

21 Order of Dismissal
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